

**Executive Summary – Enforcement Matter – Case No. 45042**

**City of New Boston**

**RN101920916**

**Docket No. 2012-1920-MWD-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MWD

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

City of New Boston WWTP, located approximately 2,500 feet southeast of the intersection of State Highway 8 and Farm-to-Market Road 1840 and approximately 1.75 miles southeast of New Boston, Bowie County

**Type of Operation:**

Wastewater treatment plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** February 7, 2014

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$35,062

**Amount Deferred for Expedited Settlement:** \$7,012

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$28,050

Name of SEP: Wastewater Treatment Plant Aerator Project

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002 and September 2011

**Executive Summary – Enforcement Matter – Case No. 45042**

**City of New Boston**

**RN101920916**

**Docket No. 2012-1920-MWD-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** August 22, 2012

**Date(s) of NOE(s):** August 30, 2012

***Violation Information***

1. Failed to comply with permitted effluent limits for ammonia nitrogen and total suspended solids [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010482001, Effluent Limitations and Monitoring Requirements No. 1].

2. Failed to submit monitoring results at the intervals specified in the permit. Specifically, the quarterly whole effluent toxicity test results for the monitoring period ending June 30, 2012, were not submitted by the 20th day of the following month as required. [30 TEX. ADMIN. CODE §§ 305.125(1) and (17), and 319.7(d), and TPDES Permit No. WQ0010482001, Biomonitoring Requirements No. 3(b)(3)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

1. The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)
2. The Order will also require the Respondent to:
  - a. Within 15 days, submit the whole effluent toxicity testing report for the monitoring period ending June 30, 2012.
  - b. Within 30 days:
    - i. Submit certification of compliance with Ordering Provision a.; and
    - ii. Update the Facility's operation guidance and conduct employee training to ensure that quarterly whole effluent toxicity testing reports are submitted in a timely manner.
  - c. Within 45 days, submit certification of compliance with Ordering Provision b.ii.

**Executive Summary – Enforcement Matter – Case No. 45042**

**City of New Boston**

**RN101920916**

**Docket No. 2012-1920-MWD-E**

d. Within 90 days, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010482001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Heather Brister, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3034; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

**TCEQ SEP Coordinator:** Meaghan Bailey, SEP Coordinator, Litigation Division, MC 175, (512) 239-0205

**Respondent:** The Honorable Johnny Branson, Mayor, City of New Boston, P.O. Box 5, New Boston, Texas 75570

**Respondent's Attorney:** N/A



**Attachment A**  
**Docket Number: 2012-1920-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of New Boston
<b>Penalty Amount:</b>	Twenty-Eight Thousand Fifty Dollars (\$28,050)
<b>SEP Offset Amount:</b>	Twenty-Eight Thousand Fifty Dollars (\$28,050)
<b>Type of SEP:</b>	Compliance SEP
<b>Project Name:</b>	<i>Wastewater Treatment Plant Aerator Project</i>
<b>Location of SEP:</b>	Bowie County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for Respondent to perform a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

Respondent is a Local Government that qualifies under Texas Water Code § 7.067 to apply the SEP Offset Amount set forth above to correct violations at its wastewater treatment facility which are described in this Agreed Order. This Agreed Order cites violations at the Respondent's wastewater treatment facility. Respondent shall purchase and install a new floating aerator in the oxidation ditch. Specifically, the SEP Offset Amount shall be used for materials, supplies, and equipment for one or more of the following: purchase of the floating aerator, electrical wiring for floating aerator, and installation of floating aerator (the "Project"). Respondent shall solicit bids from qualified contractors to install the system. Any advertisements, including solicitation for bids publication, related to the SEP must include the enforcement statement as stated in Section 6, Publicity, below. The Project will be performed in accordance with all federal, state, and local environmental laws and regulations, including obtaining any permits that may be required prior to commencement of the work.

Respondent shall use the SEP Offset Amount only for the direct cost of implementing the Project, including supplies, materials, and equipment rentals, as listed in Subsection C. Minimum Expenditure, Estimated Cost Schedule, below. No portion of the SEP Offset Amount shall be spent on administrative costs, including but not limited to operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns.

Respondent's signature affixed to the attached Agreed Order certifies that Respondent has not previously performed this Project, and that the SEP is being performed solely as part of the terms of settlement in this enforcement action.

**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by improving the quality of wastewater effluent being released into the environment. Inadequately treated effluent can carry bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis.

**C. Minimum Expenditure**

Respondent shall spend at least the SEP Offset Amount to complete the Project described in Section 1, above, and comply with all other provisions of this SEP. Respondent understands that it may cost more than the SEP Offset Amount to complete the Project.

**Estimated Cost Schedule**

Item	Quantity	Cost	Units	Total
Floating Aerator	1	\$25,000.00	Each	\$25,000.00
Electrical Wiring	1	\$3,500.00	Each	\$3,500.00
Floating Aerator Installation	1	\$5,000.00	Each	\$5,000.00
<b>Total</b>				<b>\$33,500.00</b>

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall begin implementation of the SEP. Respondent shall have completed the SEP in its entirety within 90 days after the effective date of this Agreed Order.

**3. Records and Reporting**

**A. Progress Report**

Within 30 days after the effective date of this Agreed Order, Respondent shall submit a Notice of Commencement to the TCEQ describing actions performed to date to implement the Project. Within 60 days of the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made and all actions completed on the Project during the previous 30-day period and setting forth a schedule for achieving completion of the Project within the 90-day time-frame set forth in Section 2,

Performance Schedule, above. Thereafter, Respondent shall submit progress reports to the TCEQ in 30-day increments containing detailed information on all actions completed on the Project to date as set forth in the Reporting Schedule table below:

<b>Days from Effective Order Date</b>	<b>Information Required</b>
30	Notice of Commencement describing actions taken to begin project
60	Actions completed during previous 60-day period
90	Notice of SEP completion

**B. Final Report**

Within 90 days after the effective date of the Agreed Order, or within 30 days after completion of SEP, whichever is earlier, Respondent shall submit a Final Report to the TCEQ, which shall include the following:

1. Itemized list of expenditures and total cost of the Project;
2. Copies of invoices, paid receipts, cleared checks or payment records corresponding to the itemized list in paragraph 3.B.1., above;
3. Proof of publication of invitation for bids (publication must include the enforcement statement, as stated in Section 6, Publicity, below;
4. Dated photographs of the purchased equipment; the equipment being removed; before and after work being performed during the installation process; and photographs of the completed Project;
5. A notarized/certified statement and supporting documentation demonstrating the quantifiable environmental benefits achieved as a result of the Project; and
6. Any additional information demonstrating compliance with this Attachment A.

**C. Address**

Respondent shall submit all SEP reports and any additional information as requested to the following address:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

#### 4. **Additional Information and Access**

Respondent shall provide additional information as requested by TCEQ staff, and shall allow access to all records related to the SEP Offset Amount. Respondent shall also allow representatives of the TCEQ access to the site of any work being financed in whole or in part by the SEP Offset Amount. This provision shall survive the termination of this Agreed Order.

#### 5. **Failure to Fully Perform**

If Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 through 4 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for reimbursement of a SEP, shall make the check payable to "Texas Commission on Environmental Quality," and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

#### 6. **Publicity**

Any public statements concerning this Project made by or on behalf of Respondent must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

#### 7. **Clean Texas Program**

Respondent shall not include this Project in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

#### 8. **Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned PCW</b>	4-Sep-2012	<b>Screening</b>	18-Sep-2012	<b>EPA Due</b>	5-Sep-2012
--------------	---------------------	------------	------------------	-------------	----------------	------------

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	City of New Boston		
<b>Reg. Ent. Ref. No.</b>	RN101920916		
<b>Facility/Site Region</b>	5-Tyler	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	45042	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-1920-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Heather Brister
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,500
---	-------------------	---------

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	65.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$1,625
---------------------------	-------------------	--------------------------------	---------

Notes: Enhancement for eight months of self-reported effluent violations, one NOV for same/similar violations, and one order with denial of liability.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
--------------------	----	------------------	-------------------	-----

Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
--	-------------------	-----

<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts \$875  
Approx. Cost of Compliance \$10,000  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$4,125
-----------------------------	-----------------------	---------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$4,125
-----------------------------	---------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$4,125
-----------------------------------	-------------------------------	---------

<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$825
-----------------	-----------------	-------------------	--------

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$3,300
------------------------	---------

Screening Date 18-Sep-2012

Docket No. 2012-1920-MWD-E

PCW

Respondent City of New Boston

Policy Revision 2 (September 2002)

Case ID No. 45042

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101920916

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	9	45%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 65%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for eight months of self-reported effluent violations, one NOV for same/similar violations, and one order with denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 65%

Screening Date 18-Sep-2012  
Respondent City of New Boston  
Case ID No. 45042  
Reg. Ent. Reference No. RN101920916  
Media [Statute] Water Quality  
Enf. Coordinator Heather Brister  
Violation Number 1

Docket No. 2012-1920-MWD-E

PCW

Policy Revision 2 (September 2002)  
PCW Revision October 30, 2008

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010482001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permitted effluent limits, as documented during a record review conducted on August 22, 2012. See attached table.

Base Penalty \$10,000

### >> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	25%
Potential				

### >> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

A simplified model was used to evaluate ammonia nitrogen to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

### Violation Events

Number of Violation Events 1 31 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended for the quarter containing the month of August 2011.

### Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

### Economic Benefit (EB) for this violation

### Statutory Limit Test

Estimated EB Amount \$875

Violation Final Penalty Total \$4,125

This violation Final Assessed Penalty (adjusted for limits) \$4,125

# Economic Benefit Worksheet

Respondent City of New Boston  
 Case ID No. 45042  
 Reg. Ent. Reference No. RN101920916  
 Media Water Quality  
 Violation No. 1

Percent Interest 5.0  
 Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount  
 Item Description No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	31-Aug-2011	31-May-2013	1.75	\$875	n/a	\$875

Notes for DELAYED costs

Estimated cost to determine the cause of noncompliance and to make necessary adjustments to achieve compliance with the permitted effluent limits. Date required is the initial month of noncompliance. Final date is the anticipated date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$875



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

**TCEQ**

**DATES** Assigned **PCW** 4-Sep-2012  
4-Dec-2012 Screening 18-Sep-2012 EPA Due 5-Sep-2012

## RESPONDENT/FACILITY INFORMATION

Respondent City of New Boston  
Reg. Ent. Ref. No. RN101920916  
Facility/Site Region 5-Tyler Major/Minor Source Major

## CASE INFORMATION

Enf./Case ID No. 45042 No. of Violations 2  
Docket No. 2012-1920-MWD-E Order Type 1660  
Media Program(s) Water Quality Government/Non-Profit Yes  
Multi-Media EC's Team Enforcement Team 1  
Admin. Penalty \$ Limit Minimum \$0 Maximum \$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 \$18,750

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 65.0% Enhancement Subtotals 2, 3, & 7 \$12,187

Notes Enhancement for eight months of self-reported effluent violations, one NOV for same/similar violations, and one order with denial of liability.

**Culpability** No 0.0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** Subtotal 5 \$0

**Economic Benefit** 0.0% Enhancement\* Subtotal 6 \$0

Total EB Amounts \$13  
Approx. Cost of Compliance \$350  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal \$30,937

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0.0% Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$30,937

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$30,937

**DEFERRAL** 20.0% Reduction Adjustment -\$6,187

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

**PAYABLE PENALTY** \$24,750

Screening Date 18-Sep-2012

Docket No. 2012-1920-MWD-E

PCW

Respondent City of New Boston

Policy Revision 3 (September 2011)

Case ID No. 45042

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101920916

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	9	45%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 65%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for eight months of self-reported effluent violations, one NOV for same/similar violations, and one order with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 65%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 65%

Screening Date 18-Sep-2012  
Respondent City of New Boston  
Case ID No. 45042  
Reg. Ent. Reference No. RN101920916  
Media [Statute] Water Quality  
Enf. Coordinator Heather Brister  
Violation Number 1

Docket No. 2012-1920-MWD-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010482001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permitted effluent limits, as documented during a record review conducted on August 22, 2012. See attached table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

A simplified model was used to evaluate ammonia nitrogen to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids was also considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 4

243 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$15,000

Four quarterly events are recommended for the quarters containing the months of September and October 2011 and January through June 2012.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$24,750

This violation Final Assessed Penalty (adjusted for limits) \$24,750

# Economic Benefit Worksheet

**Respondent** City of New Boston

**Case ID No.** 45042

**Reg. Ent. Reference No.** RN101920916

**Media** Water Quality

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See Economic Benefit for Violation No. 1 on the accompanying PCW.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

**TOTAL**

\$0



Screening Date 18-Sep-2012  
Respondent City of New Boston  
Case ID No. 45042  
Reg. Ent. Reference No. RN101920916  
Media [Statute] Water Quality  
Enf. Coordinator Heather Brister  
Violation Number 2

Docket No. 2012-1920-MWD-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1) and (17), and 319.7(d), and TPDES Permit No. WQ0010482001, Biomonitoring Requirements No. 3(b)(3)

Violation Description

Failed to submit monitoring results at the intervals specified in the permit, as documented during a record review conducted on August 22, 2012. Specifically, the quarterly whole effluent toxicity test results for the monitoring period ending June 30, 2012, were not submitted by the 20th day of the following month as required.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

60 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$15

Violation Final Penalty Total \$6,188

This violation Final Assessed Penalty (adjusted for limits) \$6,188

# Economic Benefit Worksheet

**Respondent** City of New Boston  
**Case ID No.** 45042  
**Reg. Ent. Reference No.** RN101920916  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	20-Jul-2012	31-May-2013	0.86	\$11	n/a	\$11
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	20-Jul-2012	31-May-2013	0.86	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to prepare and submit the whole effluent toxicity report for the monitoring period ending June 30, 2012, and to update the Facility's operation guidance and conduct employee training to ensure that quarterly whole effluent toxicity testing reports are submitted in a timely manner, in accordance with TPDES Permit No. WQ0010482001, Biomonitoring Requirements No. 3(b)(3). Date required is the date the DMR was due. Final date is the anticipated date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$350

**TOTAL**

\$15

**Respondent: City of New Boston**

**ID Number(s): TPDES Permit No. WQ0010482001**

**Docket Number: 2012-1920-MWD-E**

<b>EFFLUENT PARAMETER</b>				
<b>Permit Limit</b>				
	NH <sub>3</sub> N Daily Avg. Conc. 3 mg/L	NH <sub>3</sub> N Daily Max. Conc. 7 mg/L	NH <sub>3</sub> N Daily Avg. Loading 43 lbs/day	TSS Daily Avg. Loading 213 lbs/day
<b>Month/Year</b>				
August 2011	3.05	c	c	c
September 2011	c	8.67	c	c
October 2011	3.28	7.09	c	c
January 2012	3.05	7.73	c	823
February 2012	4.4	10.2	c	c
March 2012	3.56	7.73	c	c
April 2012	5.41	c	44.05	c
May 2012	4.16	7.60	c	c
June 2012	3.24	8.06	c	c

Conc. - concentration

mg/L - milligrams per liter

Max - maximum

Avg. - average

c - compliant

lbs/day - pounds per day

TSS - total suspended solids

NH<sub>3</sub>N - Ammonia Nitrogen





# Compliance History Report

**PENDING** Compliance History Report for CN600686802, RN101920916, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

<b>Customer, Respondent, or Owner/Operator:</b>	CN600686802, City of New Boston	<b>Classification:</b> SATISFACTORY	<b>Rating:</b> 5.92
<b>Regulated Entity:</b>	RN101920916, CITY OF NEW BOSTON WWTP	<b>Classification:</b> SATISFACTORY	<b>Rating:</b> 5.92
<b>Complexity Points:</b>	8	<b>Repeat Violator:</b>	NO
<b>CH Group:</b>	08 - Sewage Treatment Facilities		
<b>Location:</b>	Located approximately 2,500 feet southeast of the intersection of State Highway 8 and Farm-to-Market Road 1840 and approximately 1.75 miles southeast of the City of New Boston, Bowie County, Texas		
<b>TCEQ Region:</b>	REGION 05 - TYLER		
<b>ID Number(s):</b>			
<b>WASTEWATER PERMIT</b> WQ0010482001	<b>WASTEWATER EPA ID</b> TX0026018		
<b>WASTEWATER LICENSING</b> LICENSE WQ0010482001			
<b>Compliance History Period:</b>	September 01, 2007 to August 31, 2012	<b>Rating Year:</b> 2012	<b>Rating Date:</b> 09/01/2012
<b>Date Compliance History Report Prepared:</b>	September 24, 2012		
<b>Agency Decision Requiring Compliance History:</b>	Enforcement		
<b>Component Period Selected:</b>	September 24, 2007 to September 24, 2012		
<b>TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.</b>			
<b>Name:</b> Heather Brister	<b>Phone</b> (254) 761-3034		

## Site and Owner/Operator History:

- |  |     |
|--|-----|
| 1) Has the site been in existence and/or operation for the full five year compliance period?       | YES |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO  |
| 3) If YES for #2, who is the current owner/operator?   | N/A |
| 4) If YES for #2, who was/were the prior owner(s)/operator(s)?                                     | N/A |
| 5) If YES, when did the change(s) in owner or operator occur?                                      | N/A |

## Components (Multimedia) for the Site Are Listed in Sections A - J

### **A. Final Orders, court judgments, and consent decrees:**

- |   |                                   |  |
|---|-----------------------------------|--|
| 1 | Effective Date: <b>04/18/2011</b> | ADMINORDER 2009-1297-MWD-E (1660 Order)  |
|   | Classification: Minor             |  |
|   | Citation:                         | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)<br>40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(c)   |
|   | Description:                      | Failure to obtain an MSGP for industrial storm water. Specifically, in accordance with the MSGP, Part V, Section T, wastewater treatment facilities with design flows of 1.0 million gallons per day ("MGD") or more are required to obtain coverage under this permit. Respondent's permitted daily average flow is 1.7 MGD.  |
|   | Classification: Minor             |  |
|   | Citation:                         | 30 TAC Chapter 305, SubChapter F 305.125(5)  |
|   | Rqmt Prov:                        | TPDES Permit No. WQ0010482001 PERMIT   |
|   | Description:                      | Failure to properly operate and maintain all systems of treatment and control (and related appurtenances) installed or used to achieve compliance with permit conditions. Specifically, Clarifier Nos. 1 and 2 had worn down scum rake gaskets; the automatic bar screen was removed and unscreened sewage flowed into aeration basin; sewage screenings were scattered on the ground surrounding the scum box cleanout for Clarifier No. 3; and the sand media and flooring in the sludge dry beds need replaced. |

30 TAC Chapter 305, SubChapter F 305.125(4)  
 30 TAC Chapter 305, SubChapter F 305.125(5)  
 Rqmt Prov: Permit Conditions No. 2.g PERMIT  
 Description: Failed to prevent the unauthorized discharges of wastewater from the Sunset Street lift station into or adjacent to water in the state. Specifically, on April 9, 2008, approximately 20,000 gallons; December 29, 2008, approximately 50,000 gallons; March 11, 2009, approximately 50,000 gallons; and on May 4, 2009, approximately 5,000 gallons of untreated wastewater was discharged.

- B. Criminal convictions:** N/A  
**C. Chronic excessive emissions events:** N/A  
**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1	October 16, 2007	(620802)
Item 2	November 26, 2007	(620803)
Item 3	December 17, 2007	(673011)
Item 4	January 28, 2008	(673012)
Item 5	January 30, 2008	(673013)
Item 6	March 17, 2008	(673010)
Item 7	April 11, 2008	(691079)
Item 8	May 23, 2008	(691080)
Item 9	June 23, 2008	(691081)
Item 10	August 20, 2008	(711962)
Item 11	September 04, 2008	(701880)
Item 12	September 26, 2008	(711963)
Item 13	October 20, 2008	(728364)
Item 14	December 02, 2008	(728365)
Item 15	December 18, 2008	(728366)
Item 16	February 02, 2009	(751460)
Item 17	February 24, 2009	(751458)
Item 18	March 23, 2009	(751459)
Item 19	April 30, 2009	(769191)
Item 20	May 22, 2009	(769192)
Item 21	June 15, 2009	(807393)
Item 22	September 14, 2009	(807397)
Item 23	September 21, 2009	(807396)
Item 24	December 15, 2009	(807399)
Item 25	February 25, 2010	(807392)
Item 26	March 17, 2010	(807395)
Item 27	March 25, 2010	(831859)
Item 28	April 26, 2010	(831860)
Item 29	May 26, 2010	(831861)
Item 30	June 21, 2010	(846573)
Item 31	August 20, 2010	(867200)
Item 32	September 20, 2010	(874256)
Item 33	January 28, 2011	(902627)
Item 34	February 28, 2011	(909419)
Item 35	March 24, 2011	(916675)
Item 36	May 09, 2011	(925899)
Item 37	May 23, 2011	(938371)
Item 38	June 22, 2011	(945739)
Item 39	August 22, 2011	(959646)
Item 40	December 27, 2011	(984661)
Item 41	January 23, 2012	(990951)

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

2	Self Report?	YES	Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description:	Failure to meet the limit for one or more permit parameter		
	Date: <b>10/31/2011</b>	(984660)	CN600686802	
	Self Report?	YES	Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
3	Description:	Failure to meet the limit for one or more permit parameter		
	Date: <b>01/31/2012</b>	(998318)	CN600686802	
	Self Report?	YES	Classification:	Moderate
4	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description:	Failure to meet the limit for one or more permit parameter		
	Date: <b>02/29/2012</b>	(1003837)	CN600686802	
5	Self Report?	YES	Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description:	Failure to meet the limit for one or more permit parameter		
6	Date: <b>03/31/2012</b>	(1010406)	CN600686802	
	Self Report?	YES	Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
7	Description:	Failure to meet the limit for one or more permit parameter		
	Date: <b>04/20/2012</b>	(997231)	CN600686802	
	Self Report?	NO	Classification:	Moderate
8	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description:	Failure to prevent an unauthorized discharge of wastewater treatment solids into a surface water in the State.		
	Date: <b>04/30/2012</b>	(1024532)	CN600686802	
9	Self Report?	YES	Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description:	Failure to meet the limit for one or more permit parameter		
10	Date: <b>05/31/2012</b>	(1024533)	CN600686802	
	Self Report?	YES	Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
11	Description:	Failure to meet the limit for one or more permit parameter		
	Date: <b>06/30/2012</b>	(1031910)	CN600686802	
	Self Report?	YES	Classification:	Moderate
12	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description:	Failure to meet the limit for one or more permit parameter		
	Date: <b>06/30/2012</b>	(1031910)	CN600686802	

- F. Environmental audits:** N/A
- G. Type of environmental management systems (EMSs):** N/A
- H. Voluntary on-site compliance assessment dates:** N/A
- I. Participation in a voluntary pollution reduction program:** N/A
- J. Early compliance:** N/A
- Sites Outside of Texas:** N/A

**Pending** Compliance History Report for CN600686802, RN101920916, Rating Year 2012 which includes Compliance History (CH) components from September 24, 2007, through September 24, 2012.





# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF NEW BOSTON  
RN101920916**

**§        BEFORE THE  
§  
§        TEXAS COMMISSION ON  
§  
§        ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2012-1920-MWD-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of New Boston ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a wastewater treatment plant located approximately 2,500 feet southeast of the intersection of State Highway 8 and Farm-to-Market Road 1840 and approximately 1.75 miles southeast of New Boston, Bowie County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 4, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Thirty-Five Thousand Sixty-Two Dollars (\$35,062) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). Twenty-Eight Thousand Fifty Dollars (\$28,050) of the administrative penalty shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP") and Seven Thousand Twelve Dollars (\$7,012) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to comply with permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010482001, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on August 22, 2012, and shown in the table below:

<b><i>EFFLUENT PARAMETER</i></b>				
	<b><i>Permit Limit</i></b>			
	NH <sub>3</sub> N Daily Avg. Conc. 3 mg/L	NH <sub>3</sub> N Daily Max. Conc. 7 mg/L	NH <sub>3</sub> N Daily Avg. Loading 43 lbs/day	TSS Daily Avg. Loading 213 lbs/day
<b><i>Month/Year</i></b>				
August 2011	3.05	c	c	c
September 2011	c	8.67	c	c
October 2011	3.28	7.09	c	c
January 2012	3.05	7.73	c	823
February 2012	4.4	10.2	c	c
March 2012	3.56	7.73	c	c
April 2012	5.41	c	44.05	c
May 2012	4.16	7.60	c	c
June 2012	3.24	8.06	c	c

Conc. - concentration

mg/L - milligrams per liter

Max - maximum

Avg. - average

c - compliant

lbs/day - pounds per day

TSS - total suspended solids

NH<sub>3</sub>N - Ammonia Nitrogen

- Failed to submit monitoring results at the intervals specified in the permit, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and (17), and 319.7(d), and TPDES Permit No. WQ0010482001, Biomonitoring Requirements No. 3(b)(3), as documented during a record review conducted on August 22, 2012. Specifically, the quarterly whole effluent toxicity test results for the monitoring period ending June 30, 2012, were not submitted by the 20th day of the following month as required.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

- It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of New Boston, Docket No. 2012-1920-MWD-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Twenty-Eight Thousand Fifty Dollars (\$28,050) of the assessed administrative penalty shall be offset with the condition that the Respondent implements the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 15 days after the effective date of this Agreed Order, submit the whole effluent toxicity testing report for the monitoring period ending June 30, 2012 to the address below:

Compliance Monitoring Team  
Enforcement Division, MC 224  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Within 30 days after the effective date of this Agreed Order:
    - i. Submit certification of compliance with Ordering Provision No. 3.a, in accordance with Ordering Provision No. 3.e below; and
    - ii. Update the Facility's operation guidance and conduct employee training to ensure that quarterly whole effluent toxicity testing reports are submitted in a timely manner, in accordance with TPDES Permit No. WQ0010482001, Biomonitoring Requirements No. 3(b)(3).
  - c. Within 45 days after the effective date of this Agreed Order, submit certification of compliance with Ordering Provision No. 3.b.ii, in accordance with Ordering Provision No. 3.e below;
  - d. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010482001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitation, in accordance with Ordering Provision No. 3.e below; and

- e. The certification of compliance required by Ordering Provision Nos. 3.b.i, 3.c, and 3.d, shall be notarized by a State of Texas Notary Public and include the following certification language and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
1977 Industrial Boulevard  
Abilene, Texas 79602-7833

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not

effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

Ram Moruiz J  
For the Executive Director

4/14/14  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

John Branson  
Signature

12/18/2013  
Date

JOHNNY BRANSON  
Name (Printed or typed)  
Authorized Representative of  
City of New Boston

Mayor  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.





**Attachment A**  
**Docket Number: 2012-1920-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of New Boston
<b>Penalty Amount:</b>	Twenty-Eight Thousand Fifty Dollars (\$28,050)
<b>SEP Offset Amount:</b>	Twenty-Eight Thousand Fifty Dollars (\$28,050)
<b>Type of SEP:</b>	Compliance SEP
<b>Project Name:</b>	<i>Wastewater Treatment Plant Aerator Project</i>
<b>Location of SEP:</b>	Bowie County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative Penalty Amount assessed in this Agreed Order for Respondent to perform a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

Respondent is a Local Government that qualifies under Texas Water Code § 7.067 to apply the SEP Offset Amount set forth above to correct violations at its wastewater treatment facility which are described in this Agreed Order. This Agreed Order cites violations at the Respondent’s wastewater treatment facility. Respondent shall purchase and install a new floating aerator in the oxidation ditch. Specifically, the SEP Offset Amount shall be used for materials, supplies, and equipment for one or more of the following: purchase of the floating aerator, electrical wiring for floating aerator, and installation of floating aerator (the “Project”). Respondent shall solicit bids from qualified contractors to install the system. Any advertisements, including solicitation for bids publication, related to the SEP must include the enforcement statement as stated in Section 6, Publicity, below. The Project will be performed in accordance with all federal, state, and local environmental laws and regulations, including obtaining any permits that may be required prior to commencement of the work.

Respondent shall use the SEP Offset Amount only for the direct cost of implementing the Project, including supplies, materials, and equipment rentals, as listed in Subsection C. Minimum Expenditure, Estimated Cost Schedule, below. No portion of the SEP Offset Amount shall be spent on administrative costs, including but not limited to operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns.

Respondent's signature affixed to the attached Agreed Order certifies that Respondent has not previously performed this Project, and that the SEP is being performed solely as part of the terms of settlement in this enforcement action.

**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by improving the quality of wastewater effluent being released into the environment. Inadequately treated effluent can carry bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis.

**C. Minimum Expenditure**

Respondent shall spend at least the SEP Offset Amount to complete the Project described in Section 1, above, and comply with all other provisions of this SEP. Respondent understands that it may cost more than the SEP Offset Amount to complete the Project.

**Estimated Cost Schedule**

Item	Quantity	Cost	Units	Total
Floating Aerator	1	\$25,000.00	Each	\$25,000.00
Electrical Wiring	1	\$3,500.00	Each	\$3,500.00
Floating Aerator Installation	1	\$5,000.00	Each	\$5,000.00
<b>Total</b>				<b>\$33,500.00</b>

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall begin implementation of the SEP. Respondent shall have completed the SEP in its entirety within 90 days after the effective date of this Agreed Order.

**3. Records and Reporting**

**A. Progress Report**

Within 30 days after the effective date of this Agreed Order, Respondent shall submit a Notice of Commencement to the TCEQ describing actions performed to date to implement the Project. Within 60 days of the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made and all actions completed on the Project during the previous 30-day period and setting forth a schedule for achieving completion of the Project within the 90-day time-frame set forth in Section 2,

Performance Schedule, above. Thereafter, Respondent shall submit progress reports to the TCEQ in 30-day increments containing detailed information on all actions completed on the Project to date as set forth in the Reporting Schedule table below:

<b>Days from Effective Order Date</b>	<b>Information Required</b>
30	Notice of Commencement describing actions taken to begin project
60	Actions completed during previous 60-day period
90	Notice of SEP completion

**B. Final Report**

Within 90 days after the effective date of the Agreed Order, or within 30 days after completion of SEP, whichever is earlier, Respondent shall submit a Final Report to the TCEQ, which shall include the following:

1. Itemized list of expenditures and total cost of the Project;
2. Copies of invoices, paid receipts, cleared checks or payment records corresponding to the itemized list in paragraph 3.B.1., above;
3. Proof of publication of invitation for bids (publication must include the enforcement statement, as stated in Section 6, Publicity, below;
4. Dated photographs of the purchased equipment; the equipment being removed; before and after work being performed during the installation process; and photographs of the completed Project;
5. A notarized/certified statement and supporting documentation demonstrating the quantifiable environmental benefits achieved as a result of the Project; and
6. Any additional information demonstrating compliance with this Attachment A.

**C. Address**

Respondent shall submit all SEP reports and any additional information as requested to the following address:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

#### 4. **Additional Information and Access**

Respondent shall provide additional information as requested by TCEQ staff, and shall allow access to all records related to the SEP Offset Amount. Respondent shall also allow representatives of the TCEQ access to the site of any work being financed in whole or in part by the SEP Offset Amount. This provision shall survive the termination of this Agreed Order.

#### 5. **Failure to Fully Perform**

If Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 through 4 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for reimbursement of a SEP, shall make the check payable to "Texas Commission on Environmental Quality," and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

#### 6. **Publicity**

Any public statements concerning this Project made by or on behalf of Respondent must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

#### 7. **Clean Texas Program**

Respondent shall not include this Project in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

#### 8. **Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.